



Executive Office

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March 2, 2009

David Gilb, Director
Department of Personnel Administration
1515 S Street, North Building, 4th Floor
Sacramento, CA 95814

Michael Genest, Director
Department of Finance
State Capitol, Room 1145
Sacramento, CA 95814

Re: Furlough Order and State Employer Contribution

Dear Director Gilb and Director Genest:

In its January 9, 2009 memorandum directed to Agency Secretaries, Undersecretaries and Directors, the Department of Personnel Administration stated that "[s]alaries will be adjusted to reflect the unpaid furlough days, but benefits will remain the same (i.e., the furlough will not affect ... service credit, health and retirement benefits, etc.)." However, we have not heard a clear statement that the State will provide full, unreduced employer retirement contributions -- that is, contributions based on employee full salary, unreduced as a result of the effect of the furlough. As you know, if the employer's contribution is reduced without a corresponding reduction in the retirement benefit, an unfunded liability will result.

California courts have held that State employees have a contractual right to an actuarially sound system (See, *Board of Administration of the Public Employees' Retirement System v. Pete Wilson* (1997) 52 Cal.App. 4th 1109, 1131), and the California Constitution vests the CalPERS Board of Administration with plenary authority and fiduciary responsibility to administer the System in a manner that will assure prompt delivery of benefits to participants and their beneficiaries (Cal. Const., art. XVI, §17, subd. (a)). In addition, the Constitution provides that the CalPERS Board, consistent with the exclusive fiduciary responsibilities vested in it, shall have the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the retirement system. (Cal. Const., art. XVI, §17, subd. (e)). Moreover, the Public Employees Retirement Law empowers the Board to adjust from time to time the amount of the employer contributions in order to maintain the actuarial soundness of the System (Gov. Code §20814), and CalPERS expects timely payment of these contributions.

The CalPERS Board will consider, in consultation with its actuary, whether the State's contribution, in an amount less than one based on unreduced employee salaries, will place the actuarial soundness of the System at risk. The Board unequivocally reserves its power and right to determine at any time that the State's contribution must be adjusted in order to avoid the creation of the unfunded liability that will necessarily result from a reduction in the State's contribution without a corresponding reduction in retirement benefits.

We understand the fiscal challenges facing our state, and at the same time we know that the Administration and the Department of Personnel Administration appreciate the importance of the obligations of the CalPERS Board to the members, employers and beneficiaries of the CalPERS retirement system. Once the CalPERS Board considers the matter, we will let you know whether, in the Board's determination, further action is necessary to ensure the soundness of the System.

Sincerely,

ANNE STAUSBOLL
Chief Executive Officer

cc: Board of Administration